

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

214

CRM-M-49134-2022

Date of Decision : 10.01.2023

Bhagwan Dass @ Bhola

..... Petitioner

Versus

State of Punjab

..... Respondent

CORAM: HON'BLE MR. JUSTICE JAGMOHAN BANSAL

Present: Mr.Armaan Gagneja, Advocate
for the petitioner.

Mr. Amish Sharma, Asstt. A.G., Punjab.

JAGMOHAN BANSAL, J. (Oral)

1. The petitioner, through instant petition under Section 439 Cr.P.C., is seeking regular bail in FIR No. 88 dated 22.04.2022 under Sections 363, 366A, 120-B of IPC (Section 376 of IPC and Section 4 of POCSO Act, 2012 added later on), registered at Police Station City Malout, District Sri Muktsar Sahib.

2. Learned counsel for the petitioner *inter alia* contends that the petitioner is in custody since 22.04.2022. There is no allegation of commission of rape against the petitioner and there is only allegation that he has abetted in eloping the prosecutrix with the co-accused. The prosecutrix as well as complainant-mother of the prosecutrix have already been examined as well as cross-examined. They have not supported the case of prosecution. The petitioner is not involved in any other offence. The petitioner is 32 years old and has been wrongly implicated in the commission of alleged offence. The petitioner is permanent resident of

District Sri Muktsar Sahib and staying with his family which includes his wife and other family members. The petitioner has deep roots in the society. There is no possibility of flee from justice.

3. Learned State Counsel on instructions from ASI Satwant Singh submits that police report has already been filed and charges stand framed. He further submits that there are 26 prosecution witnesses and till date 03 have been examined. The prosecutrix as well as her mother have not supported the case of prosecution. The petitioner is involved in the commission of grave offence, thus, no leniency is warranted and release of petitioner would hamper the trial.

4. A two judge Bench of Hon'ble Supreme Court in **Satender Kumar Antil v. CBI (2022) 10 SCC 51**, with respect to prevailing conditions of undertrial prisoner in India has observed:

“6. Jails in India are flooded with undertrial prisoners. The statistics placed before us would indicate that more than 2/3rd of the inmates of the prisons constitute undertrial prisoners. Of this category of prisoners, majority may not even be required to be arrested despite registration of a cognizable offence, being charged with offences punishable for seven years or less. They are not only poor and illiterate but also would include women. Thus, there is a culture of offence being inherited by many of them. As observed by this Court, it certainly exhibits the mindset, a vestige of colonial India, on the part of the investigating agency, notwithstanding the fact arrest is a draconian measure resulting in curtailment of liberty, and thus to be used sparingly. In a democracy, there can never be an impression that it is a police State as both are conceptually opposite to each other.”

5. Intent of arrest and reason of denial of bail is to:

i) Secure the appearance of the accused at the time of

trial;

ii) Allay possibility of repeating of offence & jeopardising own life on account of grim prospect of being convicted;

iii) Avoid possibility of tampering of evidence and security of witnesses who may be pressurised or maltreated.

6. A person who seeks to be liberated must take judgment and serve sentence in the event of his conviction. The nature of the crime charged, severity of punishment prescribed, prime facie available evidences, history & background of the accused may indicate that any amount of bond and surety is not going to secure presence of accused, at the time of conviction. Detention or arrest not only deprives a person from his fundamental right of personal liberty guaranteed by article 21 but also freedom guaranteed by article 19(1) of our Constitution.

7. Keeping in mind:

- i) The Petitioner is in custody since 22.04.2022;
- ii) Police report under section 173 of Cr.P.C. stands filed, charges stand framed;
- iii) There are 26 prosecution witnesses and till date only 03 have been examined, thus, there is abysmally low possibility of conclusion of trial in near future;
- iv) The prosecutrix and her mother have been examined as well as cross-examined, they have not supported the case of prosecution and totally demolished the case of the prosecution;

- v) Twin stringent conditions of bail prescribed under special statutes like PMLA, UAPA, NDPS Act, Companies Act are not applicable in the case in hand;
- vi) The Petitioner is not involved in any other criminal case;
- vii) The Petitioner is permanent resident of District Sri Muktsar Sahib and staying with his family which includes his wife and other members;
- viii) Prosecution has not led any convincing/plausible documentary or oral evidence indicating possibility of Petitioner being flee from justice or tempering the evidences or winning over/threatening the witnesses;

this Court is of the considered opinion that present petition deserves to allowed and accordingly allowed. The petitioner is ordered to be released on bail subject to conditions as may be imposed by trial Court/illaqa/Duty Magistrate concerned.

(JAGMOHAN BANSAL)
JUDGE

10.01.2023
anju

Whether speaking/reasoned	Yes/No
<i>Whether Reportable</i>	<i>Yes/No</i>